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PROTECTION OF MINORITIES

Enclaved groups

Working paper prepared by Mr. Asbjørn Eide pursuant to Subcommission decision 1994/113

Introduction

1. At its 36th meeting, on 26 August 1994, the Subcommission by decision 1994/113, decided without a vote, to request Mr. Asbjørn Eide to prepare, without financial implications, a working paper on the concept and issues relating to "enclaved groups" and to present this paper to the Subcommission at its forty-seventh session. The following note constitutes the implementation of that request.

2. The notion of "enclaved groups" has not yet been formally defined under international law. It will here be treated on the basis of human rights law, including that of minority protection, but will be seen within the wider perspective of territorial integrity and political independence of States.

1. First distinction: enclaved groups should be distinguished from international enclaves

3. International enclaves are known under international law. Such enclaves are isolated parts of a foreign State's territory, entirely surrounded by the territory of another State (the surrounding State) so that it has no surface

communication with the territory of the State to which it belongs (the mother or main State) other than through the territory of the surrounding State. While being an enclave from the perspective of the surrounding State, the same territory is an exclave from the point of view of the mother State.

4. In feudal time, thousands of enclaves existed in Europe. From the point of view of the surrounding State, an international enclave is foreign territory subject to the sovereignty of the mother State. One example is Llivia, a Spanish exclave in southern France which was not occupied by the German occupation force in France during the Second World War, since it belonged to a foreign, neutral State.

5. Under international law, the main State is entitled to establish its legal order throughout its enclave. International enclaves do not as such pose any particular problem to human rights.

2. Second distinction: enclaved groups versus autonomies

6. The concept of enclaved groups should be distinguished from majority populations in legally recognized autonomous territories within independent States.

7. Numerous autonomous areas can be found within sovereign States. Some of them are entirely within the territory of the sovereign State; others have borders with other States or border on international waters. One example of a territory entirely surrounded by territory of the sovereign State concerned is Nagorny Karabakh, under USSR law an autonomy within Azerbaijan. Upon dissolution of the USSR the 15 Union republics were recognized with the borders they had prior to independence, and Nagorny Karabakh was - and is - consequently a territory with a special status within Azerbaijan. Its future status at this point is subject to controversy, the majority of the population being Armenian who have sought to make Nagorny Karabakh an independent State.

8. Numerous other autonomies existed within the Union republics of the USSR and continue at present as more or less autonomous entities within the independent States which previously were Union republics. They are not international enclaves, since they form part of the sovereign territory of the country in which they are located. The majority inhabitants can normally not be considered as enclaved groups, since they enjoy a degree of self-government within that territory; under special circumstances they might nevertheless suffer the same problems as those in enclaved groups properly speaking.

9. Those who constitute a minority within the autonomous area, on the other hand, sometimes experience the conditions of enclaved groups, as further defined below.

3. Deported peoples

10. Some particularly severe cases of enclaved groups existed in the Soviet Union from the time of the Second World War. Reference is made here to the fate of the deported nationalities - the Kalmyks, the Crimean Tatars, the Volga Germans, the Meshkhetian Turks, the Koreans, the Greeks and the Kurds.

Some 3.5 million were deported, and in the areas to which they were deported they lived a life which can only be described as enclaved groups, with very strict restrictions on their conditions of life, including even stricter restriction on movement than those which applied to the ordinary Soviet citizen of the time. Many of them were condemned to a near cultural death. Their institutions destroyed, books (including those by Marx and Lenin) burned, typographies broken, each reverted to being a non-literate society. During the Gorbachev period, the tragic fate of these people became officially recognized and their right to return started to be implemented.

4. Two different contexts of enclaved groups

11. It is submitted that enclaved groups in a reasonably restricted sense of the word can be found in two types of situations: (i) in times when ethnic conflict has resulted in a de facto division of territory within sovereign States along ethnic or religious lines, and where the Government does not hold control over part of its territory; (ii) in sovereign States where the Government has control over the whole of its territory but where a minority living in part of the territory finds itself subjected to particular restrictions.

5. Enclaved groups under unrecognized de facto authorities

12. When a division of a territory on ethnic or religious grounds has temporarily been brought about, groups within the separated territory sometimes experience particularly serious hardship.

13. Under international law and on the basis of existing international recognition, the territory of both Bosnia and Herzegovina and Cyprus are clearly demarcated. The former comprises the whole territory formed by the republic of the same name in the federation of former Yugoslavia; Cyprus comprises the whole of the island of the same name. In both cases, however, there is at present a de facto division of the territory on an ethnic basis, and serious problems have arisen for non-dominant ethnic groups living in parts of the territory under control by the de facto authority. The qualification "enclaved" is justified because the territory has been split from the rest of the country concerned and the groups concerned are subject to particular hardships.

6. The most serious contemporary situation is within Bosnia and Herzegovina

14. The de facto division of that country was initially brought about by intervention by the Yugoslav Army and has subsequently been maintained by the Bosnian Serbs. It has caused extreme violations of enclaved groups. The reports by Mr. Tadeusz Mazowiecki, the Special Rapporteur on the human rights situation in the territory of the former Yugoslavia of the Commission on Human Rights, as well as publications by numerous other institutions document at length the terrible fate of Muslims and others living as enclaved groups within territories held by the Bosnian Serbs. Among those who have documented these violations are Amnesty International, Human Rights Watch/Helsinki and others.

15. The Humanitarian Law Centre in Belgrade, which since 1992 has been documenting, analysing and monitoring human rights violations by all groups in former Yugoslavia, have, inter alia, documented the process of ethnic cleansing carried out by Bosnian Serbs against Bosnian Muslims and Bosnian Croats in many areas, such as Banja Luka.*

16. Mr. Mazowiecki has in a recent report (E/CN.4/1996/3, 21 April 1995) provided detailed information about the terrifying events taking place in this region. While the mass murders and rapes of 1992-1993 have now abated, certain towns in the area still suffer sustained campaigns of violence directed principally against the Muslim inhabitants and also against Bosnian Croats. In smaller outlying towns and villages, gangs appear to be operating with impunity. Mr. Mazowiecki reports that on the streets the non-Serb population, especially Muslims, report feeling highly vulnerable. Testimonies that people have remained hidden in their homes for weeks and months at a time are commonplace. Non-Serbs are subject to random beatings and routine humiliations. In addition, men may be summarily detained at any time and held for service in forced labour brigades.

17. There are, however, according to Mr. Mazowiecki, encouraging reports that significant numbers of the local Serb population refuse to take part in the discriminating practices against the non-Serb population. Those Serbs, however, are also living under constant pressure from extremist nationalistic groups. Mr. Mazowiecki further reports that the Serbian de facto authorities make use on a large scale of civilians for unpaid forced labour. Recruits are almost invariably members of the Muslim, Croat and Roma population.

18. The forced labour obligation and the virulence of the ongoing campaign of violence have resulted in practically all non-Serbs fervently wishing to leave the Banja Luka area at present. This illustrates one significant point about the practice of establishing "enclaved groups": the underlying purpose, or effect, is to bring the non-wanted ethnic or religious group to leave the territory. At worst, it takes the form of outright physical killing, but more often it consists of creating conditions under which continued residence in the area becomes so unpleasant that at least the young part of the population leaves. In this way, establishing "enclaved group" conditions serves as a process of ethnic cleansing.

7. The north of Cyprus: the Karpas region

19. A second situation, less severe but very problematic for those who live there, exists in the north of Cyprus, which is under the control of the de facto Turkish Cypriot authorities and with the presence of some 30,000 members of the armed forces of the Republic of Turkey. In the Karpas Peninsula the settlement was until 1974 almost entirely Greek Cypriot. Following the military conflict in 1974, the peninsula was entirely separated from the Greek Cypriot remainder of Cyprus, and the peninsula fell under

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* The Humanitarian Law Centre, Belgrade, has produced 15 "spotlight" reports on human rights violations during the armed conflicts in 1993 and 1994, and continues the documentation in 1995.

Turkish Cypriot control. Reports indicate that the Greek Cypriot population groups have been subjected to harassment and difficulties during the 21 years which have passed since the Turkish military intervention, and that the number of Greek Cypriots in the area has declined from 20,000 in 1974 to 10,000 in 1975, some 4,000 in 1976 and a gradual decline until, at the end of 1994, there remained some 520 Greek Cypriots in the Karpas region (S/1994/1407, para. 22).

8. Turkish-Cypriot enclaves from 1964 to 1974

20. The phenomenon of enclaves in Cyprus did not start in 1974, but has emerged as a consequence of a long, drawn-out confrontation between the two communities since the 1950s, due to competing views on the political future of the island. The initial desire by many Greek Cypriots for enosis, unification with Greece, was seen as a serious threat by the Turkish Cypriots. During the period of intermittent guerilla warfare prior to independence, the Turkish Cypriots, who had previously lived interspersed with the Greek Cypriots all over the island, started to retreat into enclaves, due to fear and pressure. The process continued after independence in 1960. Following the armed confrontations in December 1963, the formation of Turkish Cypriot enclaves intensified. The enclaves were for a time subjected to economic blockade which was continued until 1968 and significantly undermined the economic development of the Turkish Cypriot group and contributed to the widening gap in income and livelihood between Greek Cypriots and the Turkish Cypriots. It was further aggravated by the activities of General Grivas, an extreme nationalist, who sought to destabilize President Makarios and pushed for more violent action to achieve enosis.

9. Enclaved within sovereign States with control over the territory

21. Enclaved groups can sometimes also be found in established sovereign States not subject to a de facto separation when a group lives compactly together in a part of the country, not enjoying autonomy and surrounded by a majority population which is different from it in ethnic or religious terms, and whose members are subject to restrictions on their enjoyment of their human rights, their possibilities for economic and cultural activities, and on their right to freedom of movement, including their freedom to return to their place of residence after temporary departures. The group can be held to be enclaved if it appears probable that the restrictions are such as to block them from normal possibilities for economic and cultural self-realization.

22. Dr. Sadik Ahmet, living in Komotini, Greece, asserts that there is a large enclaved group of ethnic Turks (some 40,000) in the mountainous area of western Thrace between the Nestos and Evros rivers, encompassing parts of Xanthi, Rodopi and Evros prefectorates. He further asserts that there exists a military-restricted zone, initially established because of the civil war half a century ago but which still remains although the justification for its

existence has disappeared. He claims that only ethnic Turks live in this area; that all roads leading to the area are blocked by military check-points, and that everyone wanting to visit the area needs special short-duration permits.

23. There are restrictions on the freedom of movement and restrictions on farming, forestry and manufacturing, and basic facilities are very rudimentary or non-existent. He further alleges that there are serious difficulties for the ethnic Turks to be allowed to cross the border to Bulgaria, when they wish to have "contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties" as provided for by the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, article 2, paragraph 5.

10. Towards a working definition

24. Based on these examples - and others could be added - we could now provide a working definition of enclaved groups:

> Enclaved are groups of persons belonging to a national or ethnic, religious or linguistic group who have traditionally lived in the area; who differ from the general population now surrounding them; who are subject to special hardships due to restrictions imposed on them which are more severe than restrictions affecting members of the majority or dominant groups in the area concerned, or who experience fear of attack and maltreatment from members of the majority or dominant group, without being able to rely on effective and impartial protection by the local police and other agents of law.

25. An indicator of the existence of an enclaved group is when the restrictions have the purpose or effect of impairing their possibility to sustain and reproduce their culture within the territory in which they live.

26. Another indicator is when there are special restrictions on their movement to and from the area in which they live. To attach the notion "enclave" to a minority group is appropriate only when their freedom of movement, including the right to return, is restricted. Mention is again made of article 2, paragraph 5, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the whole text of which states:

> "Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties."

27. Yet another indicator is when the group does not enjoy the same level of effective and impartial protection by the police and other agencies of law and order in the region where they live as do members of the majority or dominant groups in the area.

28. In my report "Possible ways and means of facilitating the peaceful and constructive resolution of problems involving minorities", (E/CN.4/Sub.2/1993/34 and Add.1-4, 11 August 1993), I noted in addendum 4, recommendation 1:

> "The State should be the common home for all parts of its resident population under conditions of equality, with separate group identities being preserved for those who want it under conditions making it possible to develop those identities. Neither majorities nor minorities should be entitled to assert their identity in ways which deny the possibility for others to do the same, or which lead to discrimination against others in the common domain. A primary role of any State is to facilitate the equitable sharing of the economic wealth and social benefits of the nation as a whole. Priority in minority protection should be given to members of groups which are truly vulnerable, subject to discrimination and marginalization by the majority."

29. The enclavement of groups reflects a pathological stage in the evolution of a multicultural society, where hegemonical ethnicity, sometimes reinforced by religion, and surrounded by security threats from various directions, temporarily blocks a mature development of democratic cooperation between all groups and the formation of a civil society cutting across all groups. Contemporary human rights are based on the equality of all human beings living within the territory of any State, without discrimination based, inter alia, on race, colour, religion, ethnic or national origin.

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